IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 33866 of 2003(S)

OA.599/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3.**

2. **THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, MADURAI DIVISION, MADURAI.**

3. **THE SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM -14.**

BY ADV. SRI.K.P.DANDAPANI

RESPONDENT:

P.RADHAMMA, W/O. M.N.BALAKRISHNA PILLAI, RESIDING AT VALALIL PUTHEN PURAYIL, UMBERNADU. KALLUMALA P.O., MAVELIKKARA.

BY ADV. SRI.T.C.GOVINDA SWAMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33866/2003 S

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE O.A.NO.599/2002 ALONG WITH ANNEXURE FILED BY THE RESPONDENT BEFORE THE HON.CAT, ERNAKULAM.**

EXT.P2: **COPY OF THE REPLY STATEMENT ALONG WITH ANNEXURES FILED BY THE PETITIONERS IN O.A.599/2002 BEFORE THE HON.CAT, ERNAKULAM.**

EXT.P3: **COPY OF THE ORDER DTD. 19/06/2003 IN O.A.NO.599/2002 OF THE HON.CAT., ERNAKULAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

W.P.(C) No. 33866 of 2003

Dated, this the 17th day of August, 2007

JUDGMENT

Balakrishnan Nair, J.

The petitioners challenge Ext.P3 order of the Central Administrative Tribunal in O.A.No.599/2002.

2. The respondent was the petitioner in the above O.A. Her husband late Balakrishna Pillai was a casual employee under the Railways since 1967. He was appointed as a substitute worker on 6.11.1972. On completion of six months' period on 6.5.1973 he attained temporary status. While working in that post, he died in an accident while on duty on 13.8.1977. The legal heirs were granted compensation under the Workmen's Compensation Act. His dependent son was appointed under the compassionate appointment scheme. Though the respondent moved for family pension at the relevant time, the same was rejected. Later she came to know that a similarly placed widow's claim was upheld by the Apex Court in a judgment in 1996 and also by the Central Administrative Tribunal in the very same year. So she filed a representation on 25.6.1999 before the Divisional Railway Manager, Southern Railways, Madurai Division, claiming family pension. On coming to know that the area where her husband worked was presently under the Thiruvananthapuram Division, she submitted an application before the General Manager, Thiruvananthapuram Division on 22.3.2000. When there was no response to the said application, she filed O.A.No.599/2002 before the Ernakulam Bench of the Central Administrative Tribunal. The respondents in the O.A., who are the petitioners herein, resisted the application contending that the claim was barred by limitation. Further, it was also urged that as per the

rules, she is not eligible to get family pension. The Central Administrative Tribunal, after hearing both sides, held that her claim is covered by the judgment of the Apex Court in *Prabhabvati Devi v. Union of India & Others - AIR 1996 SC 752* and ordered to grant family pension with effect from 25.6.1999, the date on which she applied for family pension at the first instance. The respondents in the O.A. challenged the said judgment of the Central Administrative Tribunal in this writ petition on various grounds. But, at the time of hearing, the learned counsel for the petitioners submitted that the main ground pressed before this court is only the question of limitation. The learned counsel pointed out that going by section 20 of the Administrative Tribunal's Act, 1985, the claim is hopelessly barred by limitation.

3. We find that though in the reply statement before the Central Administrative Tribunal, the respondents raised the plea of limitation, it appears that the same was not argued before the Tribunal. A perusal of the judgment of the Tribunal would show that the said point was not considered by it. Normally, the reason must be the non-urging of the said contention. If it was urged and it was not considered, the same should have been raised as a specific ground in this writ petition. But we find that in the writ petition no such ground is taken. Further, as rightly pointed out by the learned counsel for the respondent, the question of limitation is not at all raised in this writ petition. The learned counsel for the petitioners contended that it is a pure question of law and therefore the petitioners are entitled to raise it even in the absence of pleadings to that effect in the writ petition. Going by the facts of the case, we feel that by the delay in approaching the authorities for family pension and thereafter the Central

Administrative Tribunal, the respondent/applicant alone suffered. In fact, the petitioners herein stood to gain. The denial of pension takes place every month. So it is a continuing cause of action. Therefore, the plea of the petitioners that the respondent's claim for family pension is barred by limitation, cannot be accepted. The respondent lost her family pension benefits from 1977 to 1999 as a result of the delay from her part to claim the same in time. No one else is adversely affected by that. Therefore, we are not inclined to accept the contention of the petitioners and in that view we agree with the order passed by the Central Administrative Tribunal granting family pension to the respondent.

In the result the writ petition fails and it is dismissed.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

mt/